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10 Attorney for Defendant  
11 FEDERATED MUTUAL INSURANCE COMPANY

12 UNITED STATES DISTRICT COURT  
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

14 TRAVELERS PROPERTY CASUALTY  
15 COMPANY OF AMERICA f/k/a AETNA  
16 CASUALTY & SURETY COMPANY OF  
17 ILLINOIS, a Connecticut corporation,  
18 TRAVELERS PROPERTY CASUALTY  
19 COMPANY OF AMERICA f/k/a THE  
20 TRAVELERS INDEMNITY COMPANY  
21 OF ILLINOIS, a Connecticut corporation,  
22 FARMINGTON CASUALTY  
23 COMPANY, a Connecticut corporation,  
24 and THE TRAVELERS INDEMNITY  
25 COMPANY OF CONNECTICUT, a  
26 Connecticut corporation,

27 Plaintiffs,

28 vs.

FEDERATED MUTUAL INSURANCE  
COMPANY, a Minnesota Corporation,

Defendant.

No. C 07-03459 BZ

**ANSWER OF DEFENDANT  
FEDERATED MUTUAL  
INSURANCE COMPANY**

**REQUEST FOR JURY TRIAL**

**COMPLAINT FILED:  
JULY 2, 2007**

Defendant FEDERATED Mutual Insurance Company ("FEDERATED")  
answers the allegation contained in the Complaint brought by Plaintiffs Travelers  
Property Casualty Company of America f/k/a Aetna Casualty & Surety Company of

1 Illinois, Travelers Property Casualty Company of America f/k/a Travelers Indemnity  
2 Company of Illinois, Farmington Casualty Company, and The Travelers Indemnity  
3 Company of Connecticut (collectively "Plaintiffs" or "Travelers") as follows:

4 1. Answering the allegations contained in Paragraph 1 of Plaintiffs'  
5 Complaint, FEDERATED is without sufficient knowledge or information to form a  
6 belief as to the truth of the allegations contained in said paragraph, and on that basis  
7 denies each and every allegation contained therein.

8 2. Answering the allegations contained in Paragraph 2 of Plaintiffs'  
9 Complaint, FEDERATED admits the allegations in said paragraph.

10 3. Answering the allegations contained in Paragraph 3 of Plaintiffs'  
11 Complaint, FEDERATED admits that Plaintiff is seeking declaratory relief, among  
12 other causes of action. Except as expressly admitted herein, FEDERATED is without  
13 sufficient knowledge or information to form a belief as to the truth of the allegations  
14 contained in said paragraph, and on that basis denies each and every remaining  
15 allegation contained therein.

16 4. Answering the allegations contained in Paragraph 4 of Plaintiffs'  
17 Complaint, FEDERATED admits that a part of the events giving rise to the claims as  
18 alleged occurred in the County of San Francisco. FEDERATED admits that based on  
19 the allegations in the Complaint, venue is proper in this District.

20 5. Answering the allegations contained in Paragraph 5 of Plaintiffs'  
21 Complaint, FEDERATED admits that the complaint filed by *Albert Valdez v. Young*  
22 *Homes, et al.* (hereinafter the "Valdez Action") in San Bernardino Superior Court,  
23 Case Number SCVSS 086564, contains the allegations set forth in this paragraph.  
24 Except as expressly admitted herein, FEDERATED lacks sufficient knowledge or  
25 information to form a belief as to the truth of the remaining allegations of this  
26 paragraph, and on that basis denies those allegations.  
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1           6. Answering the allegations contained in Paragraph 6 of Plaintiffs'  
2 Complaint, FEDERATED admits that the complaint in the Valdez Action contains the  
3 allegations set forth in the first sentence of this paragraph. FEDERATED also admits  
4 that the original Complaint in the Valdez Action was filed on or about February 5,  
5 2002. Except as expressly admitted herein, FEDERATED lacks sufficient knowledge  
6 or information to form a belief as to the truth of the remaining allegations of this  
7 paragraph, and on that basis denies those allegations.

8           7. Answering the allegations contained in Paragraph 7 of Plaintiffs'  
9 Complaint, FEDERATED admits that the complaint in the Valdez Action contains the  
10 allegations set forth in the first sentence of this paragraph. Except as expressly  
11 admitted herein, FEDERATED lacks sufficient knowledge or information to form a  
12 belief as to the truth of the remaining allegations of this paragraph, and on that basis  
13 denies those allegations.

14           8. Answering the allegations contained in Paragraph 8 of Plaintiffs'  
15 Complaint, FEDERATED is without knowledge or information sufficient to form a  
16 belief as to the truth of those allegations and thus denies the same.

17           9. Answering the allegations contained in Paragraph 9 of Plaintiffs'  
18 Complaint, FEDERATED is without knowledge or information sufficient to form a  
19 belief as to the truth of those allegations and thus denies the same.

20           10. Answering the allegations contained in Paragraph 10 of Plaintiffs'  
21 Complaint, FEDERATED is without knowledge or information sufficient to form a  
22 belief as to the truth of those allegations and thus denies the same.

23           11. Answering the allegations contained in Paragraph 11 of Plaintiffs'  
24 Complaint, FEDERATED is without knowledge or information sufficient to form a  
25 belief as to the truth of those allegations and thus denies the same.

26           12. Answering the allegations contained in Paragraph 12 of Plaintiffs'  
27 Complaint, FEDERATED admits that Young filed a cross-complaint against Rancho  
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1 Ready Mix, the date of which is unknown to FEDERATED. Except as expressly  
2 admitted herein, FEDERATED is without knowledge or information sufficient to form  
3 a belief as to the truth of those allegations and thus denies the same.

4 13. Answering the allegations contained in Paragraph 13 of Plaintiffs'  
5 Complaint, FEDERATED is without sufficient knowledge or information to form a  
6 belief as to the truth of the allegations contained in said paragraph, and on that basis  
7 denies each and every allegation contained therein.

8 14. Answering the allegations contained in Paragraph 14 of Plaintiffs'  
9 Complaint, FEDERATED admits that it issued a general liability insurance policy to  
10 Rancho Ready Mix, policy number 0634293, with effective dates of March 1, 2001  
11 through July 1, 2005.

12 15. Answering the allegations contained in Paragraph 15 of Plaintiffs'  
13 Complaint, FEDERATED admits that it issued umbrella insurance policies to Rancho  
14 Ready Mix, with effective dates March 1, 2001 through July 1, 2005.

15 16. Answering the allegations contained in Paragraph 16 of Plaintiffs'  
16 Complaint, FEDERATED alleges affirmatively that the terms and conditions of  
17 FEDERATED'S policies speak for themselves. FEDERATED otherwise denies any  
18 and all remaining allegations contained in Paragraph 16 of Plaintiffs' Complaint.

19 17. Answering the allegations contained in Paragraph 17 of Plaintiffs'  
20 Complaint, FEDERATED denies that Rancho Ready Mix tendered its defense and  
21 indemnity in the Valdez Action to FEDERATED. An entity other than Rancho Ready  
22 Mix tendered the Valdez Action to FEDERATED.

23 18. Answering the allegations contained in Paragraph 18 of Plaintiffs'  
24 Complaint, FEDERATED admits that it initially denied that a defense obligation is  
25 owed to Rancho Ready Mix and alleges affirmatively that FEDERATED'S denial  
26 letter speaks for itself. FEDERATED otherwise denies any and all remaining  
27 allegations contained in Paragraph 18 of Plaintiffs' Complaint.  
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1           19. Answering the allegations contained in Paragraph 19 of Plaintiffs'  
2 Complaint, FEDERATED alleges affirmatively that the terms and conditions of  
3 FEDERATED'S policies speak for themselves. FEDERATED otherwise denies any  
4 and all remaining allegations contained in Paragraph 19 of Plaintiffs' Complaint.

5           20. Answering the allegations contained in Paragraph 20 of Plaintiffs'  
6 Complaint, FEDERATED admits the allegations contained in Paragraph 20 of  
7 Plaintiffs' Complaint.

8           21. Answering the allegations contained in Paragraph 21 of Plaintiffs'  
9 Complaint, FEDERATED alleges affirmatively that the pleadings in the underlying  
10 State Court action, to which Paragraph 21 refers, speaks for themselves. To the extent  
11 that Paragraph 21 makes factual allegations beyond the scope of the pleadings in the  
12 underlying action, FEDERATED is without sufficient knowledge or information to  
13 form a belief as to the truth of the allegations contained in said paragraph, and on that  
14 basis, denies each and every allegation contained therein.

15           22. Answering the allegations contained in Paragraph 22 of Plaintiffs'  
16 Complaint, FEDERATED alleges affirmatively that the pleadings in the underlying  
17 State Court action, to which Paragraph 22 refers, speaks for themselves. To the extent  
18 that Paragraph 22 makes factual allegations beyond the scope of the pleadings in the  
19 underlying action, FEDERATED is without sufficient knowledge or information to  
20 form a belief as to the truth of the allegations contained in said paragraph, and on that  
21 basis, denies each and every allegation contained therein.

22           23. Answering the allegations contained in Paragraph 23 of Plaintiffs'  
23 Complaint, FEDERATED admits that it denied a defense to Rancho Ready Mix under  
24 the primary policies. FEDERATED alleges affirmatively that the terms and conditions  
25 of FEDERATED policies speak for themselves. FEDERATED otherwise denies any  
26 and all remaining allegations contained in Paragraph 23 of Plaintiffs' Complaint.  
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2 24. Answering the allegations contained in Paragraph 24 of Plaintiffs'  
3 Complaint, FEDERATED alleges affirmatively that the pleadings in the underlying  
4 state court action to which Paragraph 24 refers speak for themselves and that terms and  
5 conditions of FEDERATED'S policies speak for themselves. FEDERATED otherwise  
6 denies any and all remaining allegations contained in Paragraph 24 of Plaintiffs'  
7 Complaint.

8 25. Answering the allegations contained in Paragraph 25 of Plaintiffs'  
9 Complaint, FEDERATED denies that a potential for coverage exists under its primary  
10 policies. FEDERATED agreed to provide a defense to Ranch Ready Mix under its  
11 umbrella policy.

12 26. Answering the allegations contained in Paragraph 26 of Plaintiffs'  
13 Complaint, FEDERATED is aware that Plaintiffs provided a defense to Rancho Ready  
14 Mix. However, FEDERATED is without knowledge or information sufficient to form  
15 a belief as to the truth of any and all remaining allegations contained therein and thus  
16 denies the same.

17 27. Answering the allegations contained in Paragraph 27 of Plaintiffs'  
18 Complaint, FEDERATED admits that Travelers requested that FEDERATED  
19 participate in the defense and indemnification of Rancho Ready Mix. FEDERATED  
20 denies that it had any duty to defend or indemnify Rancho Ready Mix under the  
21 primary policies. FEDERATED accepted the defense under its umbrella policy.

22 28. Answering the allegations contained in Paragraph 28 of Plaintiffs'  
23 Complaint, FEDERATED admits that it declined to participate in the defense of  
24 Rancho Ready Mix under the primary policies. FEDERATED further admits that  
25 Travelers requested that FEDERATED contribute to the costs Travelers claims it  
26 incurred in defense of Rancho Ready Mix in the Valdez Action. FEDERATED offered  
27 to pay for its proportionate share of the defense under its umbrella policy.  
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1 FEDERATED otherwise denies any remaining allegations contained in Paragraph 28  
2 of Plaintiffs' Complaint.

3 29. Answering the allegations contained in Paragraph 29 of Plaintiffs'  
4 Complaint, FEDERATED admits that it declined to participate in the defense of  
5 Rancho Ready Mix under the primary policies. FEDERATED further admits that  
6 Travelers requested that FEDERATED contribute to the costs Travelers claims it  
7 incurred in defense of Rancho Ready Mix in the Valdez Action. FEDERATED  
8 offered to pay for its proportionate share of the defense under its umbrella policy.  
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10 30. Answering the allegations contained in Paragraph 30 of Plaintiffs'  
11 Complaint, FEDERATED is without sufficient knowledge or information to form a  
12 belief as to the truth of the allegations contained in said paragraph, and on that basis  
13 denies each and every allegation contained therein.

14 31. Answering the allegations contained in Paragraph 31 of Plaintiffs'  
15 Complaint, FEDERATED is without sufficient knowledge or information to form a  
16 belief as to the truth of the allegations contained in said paragraph, and on that basis  
17 denies each and every allegation contained therein.

18 32. Answering the allegations contained in Paragraph 32 of Plaintiffs'  
19 Complaint, FEDERATED admits that Travelers requested that FEDERATED  
20 contribute toward settlement of the Valdez Action.

21 33. Answering the allegations contained in Paragraph 33 of Plaintiffs'  
22 Complaint, FEDERATED admits that it denies and continues to deny that it has any  
23 obligation to contribute toward the settlement of the Valdez Action on behalf of  
24 Rancho Ready Mix.

25 34. Answering the allegations contained in Paragraph 34 of Plaintiffs'  
26 Complaint, FEDERATED admits that it is aware a settlement was reached in the  
27 Valdez Action. As to the remaining allegations, FEDERATED is without knowledge  
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1 or information sufficient to form a belief as to the truth of the allegations contained  
2 therein and thus denies each and every allegation contained therein.

3 35. Answering the allegations contained in Paragraph 35 of Plaintiffs'  
4 Complaint, FEDERATED admits that it offered to pay its equitable share of the  
5 defense under the umbrella policy.

6 36. Answering the allegations contained in Paragraph 36 of Plaintiffs'  
7 Complaint, FEDERATED admits that it has offered a sum certain to Travelers for the  
8 alleged costs of defending Rancho Ready Mix in the Valdez Action. Travelers  
9 rejected the offer.

10 37. Answering the allegations contained in Paragraph 37 of Plaintiffs'  
11 Complaint, FEDERATED alleges affirmatively that the pleadings in the underlying  
12 State Court action, to which Paragraph 37 refers, speaks for themselves. To the extent  
13 that Paragraph 37 makes factual allegations beyond the scope of the pleadings in the  
14 underlying action, FEDERATED is without sufficient knowledge or information to  
15 form a belief as to the truth of the allegations contained in said paragraph, and on that  
16 basis, denies each and every allegation contained therein.

17 38. Answering the allegations contained in Paragraph 38 of Plaintiffs'  
18 Complaint, FEDERATED admits the allegations contained in Paragraph 38 of  
19 Plaintiffs' Complaint.

20 39. Answering the allegations contained in Paragraph 39 of Plaintiffs'  
21 Complaint, FEDERATED admits that Britannia filed a demand for arbitration with the  
22 American Arbitration Association. FEDERATED otherwise denies any and all  
23 remaining allegations contained in Paragraph 39 of Plaintiffs' Complaint.

24 40. Answering the allegations contained in Paragraph 40 of Plaintiffs'  
25 Complaint, FEDERATED alleges affirmatively that the pleadings in the underlying  
26 State Court action, to which Paragraph 40 refers, speaks for themselves. To the extent  
27 that Paragraph 40 makes factual allegations beyond the scope of the pleadings in the  
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1 underlying action, FEDERATED is without sufficient knowledge or information to  
2 form a belief as to the truth of the allegations contained in said paragraph, and on that  
3 basis, denies each and every allegation contained therein.

4 41. Answering the allegations contained in Paragraph 41 of Plaintiffs'  
5 Complaint, FEDERATED alleges affirmatively that the pleadings in the underlying  
6 State Court action, to which Paragraph 41 refers, speaks for themselves. To the extent  
7 that Paragraph 41 makes factual allegations beyond the scope of the pleadings in the  
8 underlying action, FEDERATED is without sufficient knowledge or information to  
9 form a belief as to the truth of the allegations contained in said paragraph, and on that  
10 basis, denies each and every allegation contained therein.

11 42. Answering the allegations contained in Paragraph 42 of Plaintiffs'  
12 Complaint, FEDERATED is without knowledge or information sufficient to form a  
13 belief as to the truth of those allegations and thus denies each and every allegation  
14 contained therein.

15 43. Answering the allegations contained in Paragraph 43 of Plaintiffs'  
16 Complaint, FEDERATED admits that it issued a Business Owner's Policy to West  
17 Bay. FEDERATED also admits that its policy number is 9435065. FEDERATED  
18 further admits that the effective dates of this policy are 01/01/02-01/01/03. Except as  
19 expressly admitted herein, FEDERATED denies any and all remaining allegations  
20 contained in Paragraph 43 of Plaintiffs' Complaint.

21 44. Answering the allegations contained in Paragraph 44 of Plaintiffs'  
22 Complaint, FEDERATED alleges affirmatively that the terms and conditions of  
23 FEDERATED'S policies speak for themselves. FEDERATED otherwise denies any  
24 and all remaining allegations contained in Paragraph 44 of Plaintiffs' Complaint.

25 45. Answering the allegations contained in Paragraph 45 of Plaintiffs'  
26 Complaint, FEDERATED admits that West Bay tendered its defense and indemnity to  
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1 FEDERATED. Except as expressly admitted herein, FEDERATED denies any and all  
2 remaining allegations contained in Paragraph 45 of Plaintiffs' Complaint.

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4 46. Answering the allegations contained in Paragraph 46 of Plaintiffs'  
5 Complaint, FEDERATED admits that it denied West Bay's tender of defense. Except  
6 as expressly admitted herein, FEDERATED denies any and all remaining allegations  
7 contained in Paragraph 46 of Plaintiffs' Complaint.

8 47. Answering the allegations contained in Paragraph 47 of Plaintiffs'  
9 Complaint, FEDERATED admits that it denied West Bay's tender of defense and  
10 alleges affirmatively that the denial letter speaks for itself. Except as expressly  
11 admitted herein, FEDERATED denies any and all remaining allegations contained in  
12 Paragraph 47 of Plaintiffs' Complaint.

13 48. Answering the allegations contained in Paragraph 48 of Plaintiffs'  
14 Complaint, FEDERATED alleges affirmatively that the pleadings in the underlying  
15 State Court action, to which Paragraph 48 refers, speaks for themselves. To the extent  
16 that Paragraph 48 makes factual allegations beyond the scope of the pleadings in the  
17 underlying action, FEDERATED is without sufficient knowledge or information to  
18 form a belief as to the truth of the allegations contained in said paragraph, and on that  
19 basis, denies each and every allegation contained therein.

20 49. Answering the allegations contained in Paragraph 49 of Plaintiffs'  
21 Complaint, FEDERATED alleges affirmatively that the pleadings in the underlying  
22 State Court action, to which Paragraph 49 refers, speaks for themselves. To the extent  
23 that Paragraph 49 makes factual allegations beyond the scope of the pleadings in the  
24 underlying action, FEDERATED is without sufficient knowledge or information to  
25 form a belief as to the truth of the allegations contained in said paragraph, and on that  
26 basis, denies each and every allegation contained therein.

27 50. Answering the allegations contained in Paragraph 50 of Plaintiffs'  
28 Complaint, FEDERATED denies that the insurance policies issued by it to West Bay

1 required it to defend West Bay against the Arbitration. FEDERATED admits that it has  
2 denied and continues to deny that it has any defense obligation to West Bay in  
3 connection with the Arbitration.

4 51. Answering the allegations contained in Paragraph 51 of Plaintiffs'  
5 Complaint, FEDERATED admits that it declined to participate in the defense of West  
6 Bay. FEDERATED also admits that it has refused and continues to refuse to pay for  
7 any of the costs allegedly incurred in the defense of West Bay against the Arbitration.

8 52. Answering the allegations contained in Paragraph 52 of Plaintiffs'  
9 Complaint, FEDERATED denies any and all allegations contained therein.

10 53. Answering the allegations contained in Paragraph 53 of Plaintiffs'  
11 Complaint, FEDERATED denies any and all allegations contained therein.

12 54. Answering the allegations contained in Paragraph 54 of Plaintiffs'  
13 Complaint, FEDERATED denies any and all allegations contained therein.

14 55. Answering the allegations contained in Paragraph 55 of Plaintiffs'  
15 Complaint, FEDERATED is without sufficient knowledge or information to form a  
16 belief as to the truth of the allegations contained in said paragraph, and on that basis  
17 denies each and every allegation contained therein.

18 56. Answering the allegations contained in Paragraph 56 of Plaintiffs'  
19 Complaint, FEDERATED incorporates by reference its answers to Paragraphs 1  
20 through 55 as though fully set forth herein.

21 57. Answering the allegations contained in Paragraph 57 of Plaintiffs'  
22 Complaint, FEDERATED admits that it has no obligation to provide Ranch Ready  
23 Mix with a defense under the primary policies. FEDERATED offered its proportionate  
24 share of the defense under its umbrella policy. Travelers rejected the offer. Except as  
25 expressly admitted herein, FEDERATED denies any and all remaining allegations  
26 contained in Paragraph 57 of Plaintiffs' Complaint.  
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1           58. Answering the allegations contained in Paragraph 58 of Plaintiffs'  
2 Complaint, FEDERATED admits any and all allegations contained therein.

3           59. Answering the allegations contained in Paragraph 59 of Plaintiffs'  
4 Complaint, FEDERATED admits that an actual controversy exists between the parties.  
5 Except as expressly admitted herein, FEDERATED denies any and all remaining  
6 allegations contained in Paragraph 59 of Plaintiffs' Complaint.

7           60. Answering the allegations contained in Paragraph 60 of Plaintiffs'  
8 Complaint, FEDERATED admits the allegations contained therein.

9           61. Answering the allegations contained in Paragraph 61 of Plaintiffs'  
10 Complaint, FEDERATED incorporates by reference its answers to Paragraphs 1  
11 through 60 as though fully set forth herein.

12           62. Answering the allegations contained in Paragraph 62 of Plaintiffs'  
13 Complaint, FEDERATED denies that it has any obligation to provide Rancho Ready  
14 Mix a defense under its primary policies in the Valdez Action.

15           63. Answering the allegations contained in Paragraph 63 of Plaintiffs'  
16 Complaint, FEDERATED denies the first paragraph of allegations. FEDERATED  
17 admits that it declined to participate in the defense of Rancho Ready Mix under the  
18 primary policies. FEDERATED offered to pay for its proportionate share of the  
19 defense under its umbrella policy.

20           64. Answering the allegations contained in Paragraph 64 of Plaintiffs'  
21 Complaint, FEDERATED incorporates by reference its answers to Paragraphs 1  
22 through 63 as though fully set forth herein.

23           65. Answering the allegations contained in Paragraph 65 of Plaintiffs'  
24 Complaint, FEDERATED denies any and all allegations contained therein.

25           66. Answering the allegations contained in Paragraph 66 of Plaintiffs'  
26 Complaint, FEDERATED admits that it disputes that it has a duty to indemnify  
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1 Rancho Ready Mix. FEDERATED also admits that it contends that it owes no duty to  
2 indemnify Rancho Ready Mix for the Valdez Action.

3  
4 67. Answering the allegations contained in Paragraph 67 of Plaintiffs'  
5 Complaint, FEDERATED incorporates by reference its answers to Paragraphs 1  
6 through 66 as though fully set forth herein.

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8 68. Answering the allegations contained in Paragraph 68 of Plaintiffs'  
9 Complaint, FEDERATED is without sufficient knowledge or information to form a  
10 belief as to the truth of the allegations contained in said paragraph, and on that basis  
11 denies each and every allegation contained therein.

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13 69. Answering the allegations contained in Paragraph 69 of Plaintiffs'  
14 Complaint, FEDERATED denies the allegations contained in Paragraph 69 of  
15 Plaintiffs' Complaint.

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17 70. Answering the allegations contained in Paragraph 70 of Plaintiffs'  
18 Complaint, FEDERATED incorporates by reference its answers to Paragraphs 1  
19 through 69 as though fully set forth herein.

20  
21 71. Answering the allegations contained in Paragraph 71 of Plaintiffs'  
22 Complaint, FEDERATED admits that it has not contributed to the defense of West  
23 Bay in the Britannia Action. Except as expressly admitted herein, FEDERATED  
24 denies any and all remaining allegations contained in Paragraph 71 of Plaintiffs'  
25 Complaint.

26  
27 72. Answering the allegations contained in Paragraph 72 of Plaintiffs'  
28 Complaint, FEDERATED admits that it has not contributed to the defense of West  
Bay against the underlying arbitration demand and specifically denies that it has a duty  
to defend and/or indemnify West Bay against the underlying arbitration demand.

73. Answering the allegations contained in Paragraph 73 of Plaintiffs'  
Complaint, FEDERATED admits that an actual controversy exists between the parties.



1 Except as expressly admitted herein, FEDERATED denies any and all remaining  
2 allegations contained in Paragraph 73 of Plaintiffs' Complaint.

3 74. Answering the allegations contained in the first sentence of Paragraph 74  
4 of Plaintiffs' Complaint, FEDERATED admits the allegations contained therein.

5 75. Answering the allegations contained in Paragraph 75 of Plaintiffs'  
6 Complaint, FEDERATED incorporates by reference its answers to Paragraphs 1  
7 through 74 as though fully set forth herein.

8 76. Answering the allegations contained in Paragraph 76 of Plaintiffs'  
9 Complaint, FEDERATED denies each and every allegation contained therein.

10 77. Answering the allegations contained in the first sentence of Paragraph 77  
11 of Plaintiffs' Complaint, FEDERATED denies each and every allegation contained  
12 therein. FEDERATED admits that it has not contributed towards the fees and costs  
13 incurred in defending West Bay because FEDERATED has no obligation to defend  
14 West Bay.

15 78. Answering the allegations contained in Paragraph 78 of Plaintiffs'  
16 Complaint, FEDERATED denies each and every allegation contained therein.

#### 17 **AFFIRMATIVE DEFENSES**

18 FEDERATED asserts the following affirmative defenses to Plaintiffs'  
19 Complaint.

#### 20 **First Affirmative Defense**

21 This matter is subject to dismissal based on abstention principles in that this  
22 Court has the power to refrain from hearing cases based on "scrupulous regard for the  
23 rightful independence of the state governments' and for the smooth working of the  
24 federal judiciary" [*Quackenbush v. Allstate Ins. Co.* (1996) 517 U.S. 706, 718, quoting  
25 *Railroad Comm'n of Tex. v. Pullman Co.* (1941) 312 U.S. 496, 500-501] because the  
26 only relief sought is for equitable or discretionary relief.  
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2 **Second Affirmative Defense**

3 Plaintiffs' Complaint fails to state a claim against FEDERATED upon which  
4 relief can be granted.

5 **Third Affirmative Defense**

6 To the extent that Travelers may have failed to mitigate, minimize or avoid any  
7 damages it allegedly sustained, any recovery against FEDERATED must be reduced  
8 by that amount.

9 **Fourth Affirmative Defense**

10 As a separate and affirmative defense to the Complaint and without admitting that the  
11 terms, conditions and exclusions of an insurance policy must be pled in an affirmative  
12 defense, FEDERATED alleges that coverage for the claims that are the subject of this  
13 action is precluded, in whole or in part, by reason of the terms, conditions, provisions,  
14 limitations, endorsements and exclusions of the FEDERATED policies.

15 **Fifth Affirmative Defense**

16 As to the Complaint and each Cause of Action therein, FEDERATED alleges  
17 that Plaintiffs were obligated to, and voluntarily did, agree to participate in the defense  
18 and indemnity of their insureds, and therefore have waived their rights, if any, to the  
19 relief requested in the Complaint.

20 **Sixth Affirmative Defense**

21 FEDERATED alleges that its obligations in connection with the underlying  
22 action, if any, must be apportioned among all of the responsible insurers including,  
23 without limitation, Plaintiffs.

24 **Seventh Affirmative Defense**

25 As a separate affirmative defense, FEDERATED alleges that Plaintiffs'  
26 damages, if any, were caused by or contributed to by the acts, errors and omissions  
27 Plaintiffs and/or other individuals or entities, and that Plaintiffs' recovery against  
28 FEDERATED, if any, must be reduced accordingly.

**Eighth Affirmative Defense**

Without admitting that the subject matter of this paragraph must be pled as an affirmative defense, FEDERATED alleges that Plaintiffs may not recover from FEDERATED any amounts for which payments have been made to or are collected by Plaintiffs from third parties to this litigation, and Plaintiffs' recovery, if any, against FEDERATED must be reduced by the payments that have been made by such third parties.

**Ninth Affirmative Defense**

FEDERATED alleges that it may have additional defenses that cannot now be articulated and, therefore, FEDERATED reserves its right to amend the Answer.

**WHEREFORE** FEDERATED requests a judgment as follows:

1. That plaintiffs take nothing by reason of their Complaint;
  2. A declaration that Defendant FEDERATED has no obligation to Travelers for any amount claimed in Plaintiffs' Complaint;
  3. That defendant FEDERATED be awarded costs of suit incurred herein;
- and
4. For such other and further relief as the Court deems appropriate.

DATED: August 22, 2007

LAW OFFICES OF SEMHA ALWAYA

By: Semha Alwaya  
Semha Alwaya

Attorney for Defendant FEDERATED  
MUTUAL INSURANCE COMPANY

REQUEST FOR JURY TRIAL

FEDERATED hereby requests trial by jury.

LAW OFFICES OF SEMHA ALWAYA

By: Semha Alwaya  
Semha Alwaya  
Attorney for Defendant FEDERATED  
MUTUAL INSURANCE COMPANY